IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Mawa Vs. State of Rajasthan
S.B. CR. REVISION PETITION NO.248/1993

Against judgment & Order dated 27.07.1993 passed by Sessions Judge, Dungarpur in Criminal Appeal No.17/1986.

DATE OF ORDER :: 18th July, 2007.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. S.K. Punia for petitioner.
Mr. O.P. Rathi, P.P.

BY THE COURT:

This criminal revision petition is directed against the judgment dated 27.07.1993 passed by learned Sessions Judge, Dungarpur in Criminal Appeal No.17/1986 whereby the appeal filed by petitioner has been decided upholding his conviction under Sec.497 IPC but modifying the sentence awarded to him by the learned Munsif & Judicial Magistrate Dungarpur by reducing it from one year to six months R.I., and fine of Rs.100/-, in default of payment of fine to further undergone one months' simple imprisonment.

Briefly stated, the facts giving rise to the present petition in nutshell are that on the allegation against the present petitioner regarding keeping in Nata Mst. Sita, the married wife of complainant, the trial Court convicted Mst. Sita and Mawa for offence under Sec.494 IPC and also convicted the present petitioner Mawa under Sec.497 and sentenced him to one year rigorous imprisonment and fine of Rs.100. Jagji, the father of Mst. Sita, was also convicted in the matter and they all preferred appeal in the Court of Sessions Judge, Dungarpur. In the meantime, Jagji died and the learned Sessions Judge ultimately acquitted Mst. Sita and Mawa for offence under Sec.494 IPC, however upheld conviction of petitioner under Sec.497 IPC.

The complainant, in his complaint, which was filed on 15.04.1980, came with the case that Mst. Sita was his married wife, with whom he was married about 10 years back in accordance with Hindu rites and rituals, in the year 1978 she was taken away from his house by accused Jagji and others on the pretext to taking her to Shyamlaji Fare, and while leaving the house she went with them wearing ornaments, however, later on he came to know that she

was given in Nata to petitioner Mawa in February 1980 and during that period of their living as husband and wife, Mst. Sita begotten a child. The contention of complainant was that divorce between him and Mst. Sita had not taken place even then she was given in Nata and she was living in adultery with the cooperation of others.

I have heard learned counsel for the petitioner as well as learned Public Prosecutor and have gone through the case file.

Before me, the learned counsel appearing for petitioner, without giving any challenge to the order of conviction, has submitted that the matter pertains to the year 1978 and since then about 30 years have elapsed and during all these years the petitioner has suffered the agony of protracted litigation and has grown to old age. Learned counsel also submitted that the petitioner is a rustic villager and has suffered imprisonment for a period of one month 7 days. He prays for taking lenient view in the matter submitting that at this juncture sending the petitioner to jail would ruin his remaining life.

On the other hand, learned Public Prosecutor opposed the request made on behalf of accused-petitioner.

Taking into consideration overall facts and circumstances and the fact that the accused-petitioner is now an old man, sending him to prison for an offence committed more than 30 years back would not serve any purpose. In my opinion, the prayer made on behalf of accused-petitioner justifies to reduce the substantive sentence awarded to the accused petitioner to meet the ends of justice.

Accordingly, the revision petition is partly allowed and confirming the conviction of the petitioner for the offence u/s 497 IPC, his substantive sentence is reduced to the period already undergone maintaining the fine imposed. In case, the petitioner fails to deposit the amount of fine imposed within a period of two months from today, he will suffer the sentence in lieu thereof as awarded by the appellate Court.

(SATYA PRAKASH PATHAK)J.

/jpa